

ONE HUNDRED TWELFTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
2125 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6115

Majority (202) 225-2927  
Minority (202) 225-3641

March 20, 2012

The Honorable Jon Leibowitz  
Chairman  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

Dear Chairman Leibowitz:

We are writing regarding FTC's review of the proposed merger of Express Scripts, Inc., and Medco Health Solutions, Inc. We wrote to you last year regarding this merger, asking that FTC closely scrutinize the merger's impact on consumers and prescription drug costs.<sup>1</sup>

Press reports indicate that FTC's review will soon be complete.<sup>2</sup> We ask you to ensure this review will include a careful assessment of two important pharmacy issues: specialty pharmacy and exclusive distribution contracts.

The proposed merger raises concern about specialty pharmacy issues because the combined Medco-Express Scripts entity would control 52% of the specialty drug market and would be more than three times the size of its nearest competitor.<sup>3</sup> These market share concerns are compounded by the rapid growth of specialty pharmacy services, which, on a per-patient basis, are expected to double between 2010 and 2013.<sup>4</sup> We urge you to ensure competition is maintained in this important industry sector.

---

<sup>1</sup> Letter from Reps. Henry A. Waxman, Diana DeGette, and Frank Pallone, Jr., to the Honorable Jon Leibowitz (Sep. 9, 2011) (online at <http://democrats.energycommerce.house.gov/index.php?q=news/ranking-members-waxman-pallone-and-degette-urge-close-scrutiny-of-express-scripts-medco-health->).

<sup>2</sup> *Express Scripts-Medco Deal Critics Asked by FTC to Suggest Possible Fixes*, Bloomberg News (Mar. 10, 2012).

<sup>3</sup> *The 2010-2011 Economic Report on Retail and Specialty Pharmacies*, Pembroke Consulting (Dec. 2010).

<sup>4</sup> Express Scripts, *2010 Drug Trend Report* (Apr. 2011).

We are also concerned about exclusivity agreements between PBMs and pharmaceutical manufacturers. These types of arrangements arise when PBMs are able to negotiate with manufacturers to act as sole distributors of drugs, obtaining discounts for their own customers but raising prices for other PBMs and other purchasers. We raised concerns about these types of arrangements in the context of Medicare Part D in 2011.<sup>5</sup> We still remain concerned about their impact on both government and private-sector prescription drug costs. We ask that FTC carefully assess whether the proposed merger will increase the frequency and cost of exclusivity agreements, and if so, take action to prevent the Medco-Express Scripts merger from resulting in abuse of these agreements.

Thank you for your consideration of these requests.

Sincerely,



Henry A. Waxman  
Ranking Member



Diana DeGette  
Ranking Member  
Subcommittee on Oversight  
and Investigations

---

<sup>5</sup> Letter from Reps. Henry A. Waxman, Frank Pallone, and Diana DeGette to Reps. Joseph Pitts and Cliff Stearns (Mar. 4, 2011) (online at <http://democrats.energycommerce.house.gov/index.php?q=news/democratic-leaders-request-hearing-on-waste-and-fraud-in-medicare-part-d-manufacturer-rebates>).